SUPREME COURT OF THE UNITED STATES

IN RE JESSIE McDONALD, PETITIONER

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

No. 88–5890. Decided February 21, 1989

PER CURIAM.

Pro se petitioner Jessie McDonald requests that this Court issue a writ of habeas corpus pursuant to 28 U. S. C. § 2241(a). He also requests that he be permitted to proceed *in forma pauperis* under this Court's Rule 46. We deny petitioner leave to proceed *in forma pauperis*. He is allowed until March 14, 1989, within which to pay the docketing fee required by Rule 45(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court. We also direct the Clerk not to accept any further petitions from petitioner for extraordinary writs pursuant to 28 U. S. C. §§ 1651(a), 2241 and 2254(a), unless he pays the docketing fee required by Rule 45(a), and submits his petition in compliance with Rule 33. We explain below our reasons for taking this step.

Petitioner is no stranger to us. Since 1971, he has made 73 separate filings with the Court, not including this petition, which is his eighth so far this Term. These include four appeals,[1] 32 petitions for certiorari,[2] 22 petitions for extra-

[1] See *McDonald* v. *Alabama*, 479 U. S. 1061 (1987); *In re McDonald*, 466 U. S. 957 (1984); *McDonald* v. *Tennessee*, 432 U. S. 901 (1977); *McDonald* v. *Purity Dairies Employees Federal Credit Union*, 431 U. S. 961 (1977).

[2] See *McDonald* v. *Tobey*, 488 U. S. —— (1988) (No. 88–5619); *McDonald* v. *Metropolitan Government of Nashville and Davidson County*, 481 U. S. 1053 (1987); *McDonald* v. *Tennessee*, 475 U. S. 1088 (1986); *McDonald* v. *Tennessee*, 474 U. S. 951 (1985); *McDonald* v. *Leech*, 467 U. S. 1208 (1984); *McDonald* v. *Humphries*, 461 U. S. 946 (1983); *McDonald* v. *Metropolitan Government of Nashville and Davidson County*, 461 U. S. 934 (1983); *McDonald* v. *Draper*, 459 U. S. 1112 (1983); *McDonald* v. *Thompson*, 456 U. S. 981 (1982); *McDonald* v. *Metropolitan Government of Nash-*

ordinary writs,[3] five applications for stays and other injunctive relief,[4] and 10 petitions for rehearing.[5] Without recorded dissent, the Court has denied all of his appeals and

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ville & Davidson County, 455 U. S. 957 (1982); *McDonald* v. *Tennessee*, 454 U. S. 1088 (1981); *McDonald* v. *Draper*, 452 U. S. 965 (1981); *McDonald* v. *Tennessee*, 450 U. S. 983 (1981); *McDonald* v. *Draper*, 450 U. S. 983 (1981); *McDonald* v. *Metropolitan Airport Authority*, 450 U. S. 1002 (1981); *McDonald* v. *Metropolitan Government of Nashville and Davidson County*, 450 U. S. 933 (1981); *McDonald* v. *United States District Court*, 444 U. S. 900 (1979); *McDonald* v. *Birch*, 444 U. S. 875 (1979); *McDonald* v. *United States District Court;* and *McDonald* v. *Yellow Freight Systems, Inc.*, 444 U. S. 875 (1979); *McDonald* v. *Thompson*, 436 U. S. 911 (1978); *McDonald* v. *Tennessee*, 434 U. S. 866 (1977); *McDonald* v. *Davidson County Election Commission*, 431 U. S. 958 (1977); *McDonald* v. *Tennessee*, 431 U. S. 933 (1977); *McDonald* v. *Tennessee*, 429 U. S. 1064 (1977); *McDonald* v. *Tennessee*, 425 U. S. 965 (1976); *McDonald* v. *Tennessee*, 423 U. S. 991 (1975); *McDonald* v. *Tennessee*, 416 U. S. 975 (1974); *McDonald* v. *Tennessee*, 415 U. S. 961 (1974); *McDonald* v. *Wellons*, 414 U. S. 1074 (1973); *McDonald* v. *Metro Traffic and Parking Comm'n*, 409 U. S. 1117 (1973); *McDonald* v. *Wellons*, 405 U. S. 928 (1972); *McDonald* v. *Metropolitan Traffic and Parking Comm'n*, 404 U. S. 843 (1971).

[3] *In re McDonald*, 488 U. S. —— (1988) (No. 88–5429, mandamus and/or prohibition); *In re McDonald*, 488 U. S. —— (1988) (No. 88–5428, mandamus and/or prohibition); *In re McDonald*, 488 U. S. —— (1988) (No. 88–5397, mandamus and/or prohibition); *In re McDonald*, 488 U. S. —— (1988) (No. 88–5006, common law certiorari); *In re McDonald*, 488 U. S. —— (1988) (No. 87–7220, common law certiorari); *In re McDonald*, 488 U. S. —— (1988) (No. 87–7183, common law certiorari); *In re McDonald*, 485 U. S. —— (No. 87–6420, mandamus); *In re McDonald*, 484 U. S. —— (1987) (No. 87–5008, common law certiorari); *In re McDonald*, 484 U. S. —— (1987) (No. 86–7086, habeas corpus); *In re McDonald*, 484 U. S. —— (1987) (No. 86–7052, common law certiorari and habeas corpus); *In re McDonald*, 484 U. S. —— (1987) (No. 86–7086) (habeas corpus); *In re McDonald*, 479 U. S. 809 (1986) (habeas corpus); *In re McDonald*, 470 U. S. 1082 (1985) (habeas corpus); *In re McDonald*, 464 U. S. 811 (1983) (mandamus and/or prohibition); *McDonald* v. *Draper*, 451 U. S. 978 (1981); *McDonald* v. *Leathers*, 439 U. S. 815 (1978) (leave to file petition for writ of mandamus); *McDonald* v. *Thompson*, 434 U. S. 812 (1977) (leave to file petition for writ of habeas corpus); *McDonald* v. *Tennessee*, 430 U. S. 963 (1977) (motion to consolidate No. 76–6507 and for leave to file petition for

[Footnotes 4 and 5 are on page 3]

denied all of his various petitions and motions. We have never previously denied him leave to proceed *in forma pauperis*.[5]

The instant petition for a writ of habeas corpus arises from petitioner's 1974 state conviction for obtaining title to a 1972 Ford LTD automobile under false pretenses, for which he was sentenced to three years' imprisonment. Petitioner appealed to the Tennessee Court of Criminal Appeals, which reversed his conviction on the ground that there was no evidence that the alleged victim relied on petitioner's false statements. In January 1976, the Supreme Court of Tennessee reinstated his conviction. *State* v. *McDonald*, 534 S. W. 2d 650. We denied certiorari, 425 U. S. 955 (1976), rehearing denied, 425 U. S. 1000 (1976).

In the 13 years since his conviction became final, petitioner has filed numerous petitions and motions for relief in this

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writ of habeas corpus); *McDonald* v. *Thompson*, 429 U. S. 1088 (1977) (leave to file petition for writ of habeas corpus and other relief); *McDonald* v. *Tennessee*, 429 U. S. 1012 (1976) (stay and other relief); *McDonald* v. *United States Court of Appeals*, 420 U. S. 922 (1975) (leave to file petition for writ of mandamus); *McDonald* v. *Mott*, 410 U. S. 907 (1973) (leave to file petition for writ of mandamus and other relief).

[4]See *McDonald* v. *Metropolitan Government*, 487 U. S. —— (1988) (A-930, stay); *McDonald* v. *Metropolitan Government of Nashville and Davidson County*, 481 U. S. 1010 (1987) (stay); *McDonald* v. *Alexander*, 458 U. S. 1124 (1982) (injunction); *McDonald* v. *Thompson*, 432 U. S. 903 (1977) (application for supersedeas bond); *McDonald* v. *Tennessee*, 415 U. S. 971 (1974) (stay).

[5]See *McDonald* v. *Alabama*, 480 U. S. 912 (1987); *In re McDonald*, 479 U. S. 966 (1986); *McDonald* v. *Tennessee*, 475 U. S. 1151 (1986); *In re McDonald*, 471 U. S. 1062 (1985); *McDonald* v. *Leeck*, 467 U. S. 1257 (1984); *McDonald* v. *Draper*, 459 U. S. 1229 (1983); *McDonald* v. *Thompson*, 457 U. S. 1126 (1982); *McDonald* v. *Draper*, 451 U. S. 933 (1981); *McDonald* v. *Tennessee*, 425 U. S. 1000 (1976); *McDonald* v. *Tennessee*, 417 U. S. 927 (1974).

[6]In the affidavit in support of his present motion to proceed *in forma pauperis*, petitioner states that he earns approximately $300 per month, is self-employed, and has less than $25 in his checking or savings account. He states that he has no dependents.

Court and in the Tennessee courts, all of which have been rejected. In the instant petition, for example, he requests that the Court "set aside" his conviction and direct the State to "expunge" the conviction "from all public records." He is not presently incarcerated. He contends that his constitutional rights were violated by the State's failure to prove that the property to which he obtained title under false pretenses was valued at over $100, as required by the statute under which he was convicted. Petitioner has put forward this same argument—unsuccessfully—in at least four prior filings with the Court, including a petition for mandamus, which was filed 13 days before the instant petition and was not disposed of by the Court until more than a month after this petition was filed.[1]

Title 28 U. S. C. § 1915 provides that "[a]ny court of the United States *may* authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security therefor" (emphasis added). As permitted under this statute, we have adopted Rule 46.1, which provides that "[a] party desiring to proceed in this Court *in forma pauperis* shall file a motion for leave to so proceed, together with his affidavit in the form prescribed in Fed. Rules App. Proc., Form 4 . . . setting forth with particularity facts showing that he comes within the statutory requirements." Each year, we permit the vast majority of persons who wish to proceed *in forma pauperis* to do so; last Term, we afforded the privilege of proceeding *in forma pauperis* to about 2,300 persons. Paupers have been an important—and valued—

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[1] See *In re McDonald*, 488 U. S. —— (1988) (No. 88–5428, petition for mandamus and/or prohibition); *In re McDonald*, 484 U. S. —— (1987) (No. 86–7052, petition for common law certiorari or habeas corpus); *McDonald* v. *Tennessee*, 475 U. S. 1088, rehearing denied, 475 U. S. 1151 (1986) (petition for certiorari); *In re McDonald*, 479 U. S. 809 (1986) (petition for habeas corpus).

part of the Court's docket, see, *e. g.*, *Gideon* v. *Wainwright*, 372 U. S. 335 (1963), and remain so.

But paupers filing *pro se* petitions are not subject to the financial considerations—filing fees and attorneys fees—that deter other litigants from filing frivolous petitions. Every paper filed with the Clerk of this Court, no matter how repetitious or frivolous, requires some portion of the institution's limited resources. A part of the Court's responsibility is to see that these resources are allocated in a way that promotes the interests of justice. The continual processing of petitioner's frivolous requests for extraordinary writs does not promote that end. Although we have not done so previously, lower courts have issued orders intended to curb serious abuses by persons proceeding *in forma pauperis*.[4] Our order here prevents petitioner from proceeding *in forma pauperis* when seeking extraordinary writs from the Court.[5] It is perhaps worth noting that we have not granted the sort of extraordinary writ relentlessly sought by petitioner to any litigant—paid or *in forma pauperis*—for at least a decade. We have emphasized that extraordinary writs are, not surprisingly, "drastic and extraordinary remedies," to be "reserved for really extraordinary causes," in which "appeal is clearly an inadequate remedy." *Ex parte Fahey*, 332 U. S. 258, 259, 260 (1947).

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[4] See, *e. g.*, *Procup* v. *Strickland*, 792 F. 2d 1069 (CA11 1986); *Peck* v. *Hoff*, 660 F. 2d 371 (CA8 1981); *Green* v. *Carlson*, 649 F. 2d 285 (CA5 1981); cf. *In re Martin-Trigona*, 737 F. 2d 1254, 1261 (CA2 1984) ("Federal courts have both the inherent power and constitutional obligation to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions").

[5] Petitioner has repeatedly ignored the letter and spirit of this Court's Rule 26, which provides in part that, "[t]o justify the granting of [an extraordinary writ], it must be shown that the writ will be in aid of the Court's appellate jurisdiction, that there are present exceptional circumstances warranting the exercise of the Court's discretionary powers, and that adequate relief cannot be had in any other form or from any other court."

Petitioner remains free under the present order to file *in forma pauperis* requests for relief other than an extraordinary writ, if he qualifies under this Court's Rule 46 and does not similarly abuse that privilege.

It is so ordered.